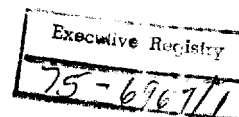


DD/A 75-2953



24 JUN 1975

MEMORANDUM FOR: Deputy Director for Operations
SUBJECT : Acting Chairman, Information Review
Committee

During the temporary absence from Headquarters of
Mr. John F. Blake, Chairman of the Information Review
Committee, from 7 through 20 July 1975, you are
appointed Acting Chairman of the Information Review
Committee.

/s/ W. E. Colby

W. E. Colby
Director

ORIGINATOR:

EXECUTIVE REGISTRY FILE

I-6

Signed: John F. Blake

24 JUN 1975

John F. Blake
Deputy Director for
Administration

(Date)

Distribution:

Original - DDO (Mr. William E. Nelson)
1 - DCI 1 - DD/A Subject
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1 - JFB Chrono

STAT

TRANSMITTAL SLIP		DATE JUN 15 1975
TO: ER		
ROOM NO.	BUILDING	
REMARKS:		
<p>Attached is a new copy of OLC 75-0897 which went through your office originally the other day.</p> <p>PLEASE SUBSTITUTE THE ATTACHED COPIES FOR THOSE NOW IN YOUR FILES. CHANGES WERE MADE WHICH ARE NOT REFLECTED IN THE COPIES WHICH WERE DISTRIBUTED.</p> <p>Any questions, call </p>		
FROM: OLC		
ROOM NO.	BUILDING	EXTENSION

FORM NO. 241
1 FEB 55

REPLACES FORM 36-8
WHICH MAY BE USED.

(47)

STAT

16 JUN 1975

Honorable John C. Stennis
United States Senate
Washington, D. C. 20510

Dear Senator Stennis:

The amended Freedom of Information Act, which is just four months old, is having a serious and adverse impact on the operations of this Agency. Indeed, it is my considered view that in time it is highly likely that this Agency will not be able to fully and effectively perform the functions and duties for which it was created unless legislative relief is provided. In reaching this conclusion, I am drawing on our experience under the amended Act in this brief period, and also on what is visibly ahead of us.

For an understanding of the situation, a brief summary of the substance of the amended law is necessary. That summary is:

(a) Any person in this country or elsewhere may request any document or documents from this Agency (or any other agency) by merely submitting a request which "reasonably describes" the documents. He does not have to show a need or an interest and his "reasonable description" can be in all-inclusive and far-reaching terms.

(b) An agency must supply copies of requested documents unless, having searched for and located the documents, the agency reviews the documents and determines that they fall within one or more of nine exemptions specified in the Act. One such category of exemption is classified national security information. In determining whether a requested document is classified, the agency must determine not only that the document is or is not marked with a classified stamp, but it must also conduct a classification review, against the standards of the appropriate Executive order (Executive Order 11652), in order to determine that the document does or does not continue to require classification at the time of the review.

(EXECUTIVE ORDER 11652)

I-6

(c) The requested agency must perform the foregoing and reach its decision to grant or withhold the document within 10 work days of receipt of the request. It must do this even if the request requires review of vast quantities of documents and even if the agency has numerous requests before it at any one time. (In this regard, this Agency has received, since February 19, the effective date of the amendment, about 1,000 requests. On two occasions, over 100 were received in one day, which would mean that 100 search, review and decision actions would have to be accomplished in 10 days.)

(d) If the requested agency fails to reach its decision and convey it to the requester by the 10th day, the requester is entitled to sue forthwith. There is an appeal procedure within each agency and in those instances where the 10-day deadline is met, but the time limit for considering and acting on the appeal (which is 20 work days) is not met, the requester may immediately institute suit at the expiration of that time. (There is provision for extending the 30 days available for initial decision and appeal by an additional 10 days and, in addition, agencies may negotiate with requesters for additional time. But, as in any negotiation, the requester does not have to negotiate or reach agreement.)

(e) The amended Act, specifically overriding the Mink decision of 1973, authorizes the courts to make their own determinations that the information at issue is or is not national security information, disclosure of which would or would not do damage to national security, notwithstanding a line of cases in which the courts have asserted their inability and lack of expertise in the area of national security and foreign relations.

Putting aside the danger inherent in the expanded judicial review that a court might release information damaging to national security, the immediately harmful impact of the amended Act is seen in the severe administrative problems--which include the necessity to handle each request in light of the availability of immediate litigation--and in its effects on intelligence sources, foreign intelligence services, and cooperating U.S. companies and individuals.

As to the administrative problems, we have received about 1,000 requests in the two months in which the amended Act has been in force. Many of these require searching through massive quantities of documents. It has been necessary to divert considerable manpower from other duties

to search for and review these documents. In the great majority of cases, some requested documents do exist, but it has not been possible to accomplish the necessary review within the 10-day deadlines. In addition, a number of requests have originated from various requesters addressed in similar or identical terms to more than one agency. Some addressed to this Agency have concerned documents in which other agencies have a substantive interest. Requests of this nature require interagency coordination, a time-consuming process which again is impossible or greatly hampered by the severe time limitations. The result of all this is that it is not possible to meet deadlines in the great bulk of cases, mistakes are going to be made, and information is going to be released or withheld in error. It is likely that different agencies will take inconsistent positions on similar questions.

Litigation under the amended Act is just beginning, but it is apparent that we are going to be in court with numerous cases in the near future. To date, three have been filed against CIA, and one other (against Treasury) involves CIA information and documents. A number of persons whose requests have been denied have appealed within the Agency and have indicated that if the original decision is upheld on appeal, they will sue to compel disclosure. Almost certainly, we will have a dozen or more cases at some stage of litigation before summer, with others well advanced within the administrative pipeline.

There are special problems in the litigation of these cases, most of which flow directly from the severe deadlines established by the Act, in conjunction with the right of any and all persons to request any document. These deadlines include the requirement that decisions to release or withhold documents must be made within 10 work days of receipt of the request; decisions on appeals from deadlines must be made within 20 days. If either of these deadlines is not met, the requester may sue forthwith. When suit is instituted, the Government must file its answer to the complaint within 30 days (rather than the usual 60 for other cases). And finally, Freedom of Information cases are to take precedence over all other cases on the court dockets except "as to cases the court considers of greater importance." Thus, the Agency must process action on requests--the numbers of which it cannot control or limit--under deadlines which realistically cannot be met, which failure can bring on immediate litigation which in turn will proceed on an accelerated timetable.

The opportunity for careful consideration and decisions, for analysis, for the determination of strategy and tactics, for the development of legal theories, for consultation among agencies having similar or duplicate requests, and for consultation with the Department of Justice and U.S. attorneys--in short, the usual problems and considerations involved in preparing to defend in a lawsuit--is severely limited by these tight deadlines. This statutory

formula will generate lawsuits and seriously limit the Government's ability to adequately and properly defend them. The imposition of such a strait jacket in the area of national security surely was not intended.

As to the effect on our intelligence sources and cooperating individuals, a number of foreign intelligence services with which we work have expressed their serious concern that this Agency will be unable to keep their secrets. In this country, corporations and organizations which have cooperated in the past have articulated a reluctance to continue to do so. Sensitive sources are particularly concerned about possible disclosure of their identity. While it is difficult to know when an intelligence source begins to disassociate from us or a potential source decides not to cooperate, it seems certain that many sources and potential sources will share the concerns mentioned above and will limit or discontinue any cooperation with us.

In sum, it is clear that the recent amendments to the Freedom of Information Act are having a serious impact on our ability to administer the Central Intelligence Agency as the Congress intended. It is equally clear that these amendments will impair the foreign intelligence collection effort and our effectiveness in producing the quality of finished intelligence which our policymakers and the Congress have come to expect.

It is our understanding that the congressional committees having primary responsibility for the administration of the Freedom of Information Act will soon request reports from the various Government departments and agencies on the impact of this legislation. We will, of course, cooperate with these committees in providing them with pertinent information. I am aware of your interest in this subject, however, and wanted you to have the benefit of this preliminary report. We will keep you informed regarding this situation in the hope that some modification of the existing legislation can be developed to ameliorate the problems set forth above.

Sincerely,

/s/ W. E. Colby

W. E. Colby
Director

Distribution:

Original - Addressee (w/enclosure)

- ✓ 1 - DCI (w/enclosure)
- 1 - DDCI (w/enclosure)
- 1 - ER
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- 1 - OGC (w/enclosure)
- 1 - DDA (w/enclosure)
- 1 - C/IRS (w/enclosure)

OLC:OGC:JSW/JDM/GLC/PLC/WEC Changes: Cmw (typed 16 June 1975)

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As to the effect on our intelligence sources and cooperating individuals, a number of foreign intelligence services with which we work have expressed their serious concern that this Agency will be unable to keep their secrets. ~~Enclosed is a summary of their reactions.~~ In this country, corporations and organizations which have cooperated in the past have articulated a reluctance to continue to do so. While it is difficult to know when an intelligence source begins to disassociate from us or a potential source decides not to cooperate, it seems certain that many sources and potential sources will share the concerns mentioned above and will limit or discontinue any cooperation with us.

*W. E. Colby
Director*

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Sincerely,

W. E. Colby
Director

Enclosure